IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 192 of 2004

M P SAIYED PRESIDENT

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 192 of 2004

MR SUBRAMANIAM IYER for Petitioner No. 1

Mr.A.D.Oza learned P.P. for Respondent Nos. 1-3

Mr.S.B.Vakil learned senior advocate for

Mr.S.K.Patel learned advocate for Respondent No.4-11

Mr.R.P.Mankad learned advocate for respondent no.12-14

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of Order: 01/03/2004

ORAL ORDER

Rule. Mr.A.D.Oza learned P.P. waives service of rule on behalf of respondent nos.1 to 3 and Mr.S.K.Patel learned advocate waives service of rule on behalf of respondent nos. 4 to 11 and Mr.R.P.Mankad learned advocate waives service of rule on behalf of respondent nos. 12 to 14. With the consent of the learned advocates for the parties, this matter is decided finally.

Heard the learned advocates for the respective parties.

The matter concluded at 3.45 p.m. today and if the order will not be passed today, this petition shall become infructuous. Therefore, I am passing the final operative order only and the detailed reasoned order shall follow.

To this, Mr.S.B.Vakil learned senior advocate for respondent nos. 4 to 11 relied on the judgment in case of State of Punjab and others V/s Jagdev Singh Talwandi reported in AIR 1984 S.C.444, more so relied on paras 30 and 31 which read that " It is desirable that the final order which the High Court intends to pass should not be

announced until a reasoned judgment is ready for pronouncement. Orders passed by the High Court are subject to the appellate jurisdiction of the Supreme Court under Art.136 of the Constitution and other provisions of the concerned statutes. Serious difficulties arise on account of the practice increasingly adopted by the High Courts of pronouncing the final order without a reasoned judgment. The practice achieves no useful purpose" and submitted that a reasoned order should be passed.

I have perused the said judgment. In that case, the Apex Court was considering Sec.3(3) read with Sec.3(2) of the National Security Act, 1980. While perusing paras 2 & 3, it appears that "The respondent was arrested in pursuance of the order of detention on the night between Oct.3 and 4, 1983. He was first lodged in the Central Jail, Patiala and from there he was taken to Ambala, Baroda and Fathegarh (U.P.). He filed a Writ petition (No.463 of 1983) in the High Court to challenge his transfer and detention in a place far away from Ambala. He withdrew that petition on an assurance by the Government that he will be sent back to Ambala, which the Government did on October 28. The grounds of detention were served on the respondent on Oct.6,1983. Those grounds show that the petitioner was detained on the basis of two speeches allegedly made by him; one on July 8, 1983 at Nihang Chhowani, Baba Bakala, District Amritsar and the other on Sept.20, 1983 at Gurudwara Manji Sahib, Amritsar and two other grounds were also stated by the petitioner."

While disposing of the petition, the Apex Court in para 30 & 31 has observed as stated above. The Apex Court has used the word "desirable" and not "shall". I am of the opinion that the judgment cited by the learned advocate of the respondents will not help them as the facts of the said case are altogether different. In this case, if the final order is passed without reasoned order, there will not be any such harm to the respondents. Therefore, I am passing the final order and the reasoned order shall follow.

The respondent no. 2 is hereby directed to grant necessary permission to the petitioner to take out Tazia procession and perform their religious ceremony on the occasion of holy Moharram falling on 2nd March, 2004 and they shall provide adequate police force for protection of the people participating in the procession.

This petition is partly allowed. Rule is made

absolute to the aforesaid extent. The petitioner is directed to inform respondent nos. 1 & 2 by fax and phone on his own costs.

Direct service is permitted today.

(SHARAD D DAVE, J)

srilatha

After the order was pronounced, Mr.S.K.Patel learned advocate for respondent nos. 4 to 11 requested this Court to stay this order. Considering the facts and circumstances of the case and specially the fact that Moharram is scheduled on 2nd March, 2004, I find no justification in the request made by Mr.Patel. Hence, rejected.

(SHARAD D DAVE, J)

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